Supreme Court, U. S.
FILED
AUG 11 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 75-651, 75-715, and 75-718
(Consolidated)

No. 75-651

TEAMSTERS LOCAL UNION 657, *Petitioner*
v.
JESSE RODRIGUEZ, ET AL., *Respondents*

No. 75-715

SOUTHERN CONFERENCE OF TEAMSTERS, *Petitioners*
v.
JESSE RODRIGUEZ, ET AL., *Respondents*

No. 75-718

EAST TEXAS MOTOR FREIGHT SYSTEM, INC., *Petitioner*
v.
JESSE RODRIGUEZ, ET AL., *Respondents*

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR PETITIONER SOUTHERN CONFERENCE OF TEAMSTERS

DAVID PREVIANT
211 W. Wisconsin Avenue
Milwaukee, Wisconsin 53203

L. N. D. WELLS, JR.
G. WILLIAM BAAB
Suite 200—8204 Elmbrook Drive
Dallas, Texas 75247

Counsel for Petitioner,
Southern Conference of Teamsters

August, 1976

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

SUBJECT INDEX

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OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit is reported at 505 F.2d 40 and reprinted here in the Appendix herein. (A. 68-111).[1]

The Decision of the United States District Court for the Western District of Texas, dated March 22nd, 1973, is reported at 6 CCH EPD ¶ 8815, and is similarly reprinted in the Appendix hereto. (A. 55-67).

[1] References to the Appendix printed pursuant to the requirements of Rule 36, following the grant of certiorari, are by the notation "A" followed by pagination.

JURISDICTION

The Judgment of the United States Court of Appeals for the Fifth Circuit, reversing the District Court's Decision, was entered upon November 24, 1974. Petitions for Rehearing filed by employer East Texas Motor Freight (hereinafter ETMF), the Southern Conference of Teamsters (hereinafter Southern Conference) and Teamsters Local 657 (hereinafter Local 657) were denied upon August 18, 1975. Petitions for certiorari were thereafter timely filed by ETMF, Southern Conference and Local 657 within 90 days of that date. This Court has jurisdiction of the consolidated cases under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED [2]

1. Does a union violate Title VII [3] by negotiating a seniority system, non-discriminatory in origin and upon its face, with competitive job seniority from date

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[2] Issues arising from a class-wide award of transfer and seniority relief, unrelated to a showing of discrimination against individual class members, are fully discussed in the brief filed by International Brotherhood of Teamsters in *T.I.M.E.-D.C., Inc.* v. *United States of America*, Consolidated Nos. 75-636 and 75-672. That brief contains a substantially more extensive discussion of the legislative history of Title VII (see fn. 3, *infra*) and this Court's decision in *Franks* v. *Bowman Transportation Co.*, — U.S. —, 47 L.Ed.2d 444 (1976). For brevity's sake, that discussion is not fully repeated herein.

Southern Conference defers to ETMF in regard to the serious issues raised by the Fifth Circuit's *sua sponte* certification of a Texas-wide class, and its holding that the mere existence of a statistical imbalance in racial composition of employees in a particular job classification justifies (a) disregard of the legal standard for proof of an individual claim of discrimination, and (b) disregard of evidentiary stipulations which effectively prohibit a finding of discrimination against the individual claimants.

[3] Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*

of entry into the particular bargaining unit, where alleged discriminatees have stipulated at trial that their claim is based solely upon the employer's refusal to consider their request to transfer into the particular bargaining unit, and the seniority system thus has no effect in excluding such employees from the bargaining unit jobs in question?

2. Does a union violate Title VII solely by the establishment and continuation of a seniority system, non-discriminatory in its origin and upon its face, solely because the seniority system provides competitive job seniority from date of entry into the particular bargaining unit?

STATUTORY PROVISIONS

Section 703(a) through (j) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-2(a)-(j), 42 U.S.C. § 1981 and 29 U.S.C. §§ 158(b)(3) and 159(a) are reprinted in the Appendix. (A. 450-56).

STATEMENT OF THE CASE

A. Nature of the Case

The case at bar was brought as a private action under Section 706 of Title VII of the Civil Rights Act of 1964, as amended. In some respects, it raises questions substantially related to those before the Court in *International Brotherhood of Teamsters* v. *United States of America* (No. 75-636), and *T.I.M.E.-D.C., Inc.* v. *United States of America* (No. 75-672).

Here, plaintiffs were "city" motor freight employees for ETMF at its San Antonio, Texas terminal. They contended that they had been discriminatorily denied "road" motor freight jobs by ETMF and also variously complained of "no transfer" practices by ETMF and of the seniority system in effect at ETMF's

San Antonio terminal pursuant to collective bargaining agreements.

At trial, the parties entered into stipulations which defined plaintiffs' claims against ETMF, Southern Conference and Local 657, and substantially reflected upon evidentiary issues involved. Relevant stipulations were: (a) "that the only issue presently before the Court pertaining to the company (ETMF) is whether the failure of the defendant, East Texas Motor Freight, to consider plaintiffs' line (road) driver applications (pursuant to ETMF's non-transfer rule) constituted a violation of Title VII and 42 U.S.C. § 1981"; (b) that plaintiffs' claim against the union entities was based upon "the maintenance of separate seniority rosters for city drivers and line (road drivers . . . and "the fact that any city drivers regardless of their race, if they transfer from city driver classification to road driver classification loses his (sic) accumulated city seniority"; (c) that "the no-transfer rule of East Texas Motor Freight, that is, no-transfer between classifications which would include no-transfer for the city to road or road to city has been uniformly applied without regard to race, color or national origin"; and (d) "that the plaintiffs were employed at the San Antonio terminal of East Texas Motor Freight (in their original employment) without regard to their race, color or national origin."[4] As noted by the Fifth

[4] The precise stipulation was:

MR. WEISS: "The parties stipulate that the plaintiffs were employed at the San Antonio Terminal of East Texas Motor Freight without regard to race, color or national origin.

THE COURT: That means, Mr. Weiss, the original employment?

MR. WEISS: Yes, that's right, your Honor. Yes, sir, that's right, Your Honor."

Circuit, and as reflected by record evidence as well, the responsibility for hiring plaintiffs and initial assignment of job classifications rested solely with ETMF. Similarly, Southern Conference and Local 657 did not participate in the institution or application of ETMF's "no-transfer" policy prohibiting transfer between city and road classifications. Thus, plaintiffs' claims were restricted, as to Southern Conference and Local 657, solely to a theory of "lock-in" discrimination by the operation of the contractually-created seniority system governing job rights of road and city employees. (A. 114).

B. Statement of Facts

(1) The Nature of City and Road Jobs.

As noted above, plaintiffs were at all relevant times city motor freight employees at ETMF's San Antonio, Texas terminal.

City motor freight employees are those performing the various functions necessary to operate a local pick-up and delivery freight service (local drivers, hostlers [individuals moving equipment to various locations around the freight yard itself] dockmen, checkers, etc.). Road drivers are exclusively long-haul, over-the-road drivers.

At the time each plaintiff was originally hired, ETMF had no road operations in San Antonio, and employed no road drivers there. (A. 55). The only terminals within the State of Texas at which ETMF hires and domiciles road drivers are: Dallas, El Paso, Longview, Pecos, San Angelo, and Texarkana. (A. 70, fn. 3). Plaintiffs never applied there for road jobs. (A. 72-75). Prior to 1970, only Anglos (whites) held road jobs for ETMF in Texas. (A. 86).

Terms and conditions of employment, including wages, hours and seniority rights of ETMF employees are governed by various separate collective bargaining agreements which cover, respectively, the city employees on the one hand and road employees on the other at each separate ETMF terminal. (A. 115-16). Each separate city and road agreement at each separate terminal is signed by ETMF and the individual autonomous local union, affiliated with the International Brotherhood of Teamsters, with geographical jurisdiction over the area in which the particular ETMF terminal is located. (A. 116). Thus, at all relevant times there existed a separate collective bargaining agreement covering city employees at ETMF's San Antonio terminal, the contracting parties being Local 657 and ETMF. There has never been a road agreement between ETMF and Local 657 at San Antonio. The only road contracts within the State of Texas were and are in effect at the road terminals mentioned above, between ETMF and various local unions who were not made parties to this case.

These separate contracts, covering respectively road employees on the one hand and city on the other, at the various individual locations at which ETMF has terminals, have developed for wholly non-discriminatory reasons, discussed in more detail *infra*.

Under the contracts which define their terms and conditions of employment, city employees are all paid the same hourly wage, equal to and in some instances slightly higher than the hourly rates, where applicable, paid to road drivers. (A. 339, 349). For example, the effective hourly wage for ETMF's city employees at the San Antonio terminal as of January 1, 1973 was $5.80 (A. 349). Road drivers are paid a mileage rate

for most long haul driving, with the mileage rate formulated to approximate the road driving hourly rate applicable to non-driving work. (A. 340-41). As of January 1, 1973, the road hourly rate applicable to Texas was $5.72.[5] (A. 339) Fringe benefits for the two groups of employees (city and road) were and are identical. (A. 223). Regular city employees have a weekly guarantee of 40 hours of work, with time and one-half, and in some instances double time, for hours per week over that figure. (A. 223-24). Regular road employees have no weekly guarantee and do not receive premium pay for overtime work. (*Ibid.*). But despite the absence of a weekly hour guarantee, many road drivers nevertheless have an opportunity to earn a larger annual salary than that paid to city employees by working longer hours (up to 70 hours per week), being paid on a mileage basis for their driving. At the same time, road drivers bear their own living expenses incurred out of town, generally work longer hours and generally are away from their homes and families for many days at a time. (A. 223-24).

From the foregoing, it can be determined that regular city employees were guaranteed, as of January 1, 1973, a minimum gross yearly earning of more than $12,000.00, excluding all fringe benefits and premium pay considerations.[6] (A. 349). Because of the applicable pay rate, the guaranteed nature of the work, equal fringe benefits and the ability of city employees to work regular hours while remaining at their home

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[5] The hourly rate for peddle-run (short haul) driving work was, as of January 1, 1973, $5.80. Peddle run work is considered road work and is governed by applicable road contracts. (A. 340).

[6] This minimum yearly earning has risen sharply since 1973 and is, as of July 1976, more than $16,000.

domicile and enjoying a normal family life, many employees apparently choose to do city work; thus, the Anglo, Black and Spanish-surname complements of city employees at ETMF's San Antonio terminal, indeed the make-up of city employees at terminals across the state of Texas, generally reflected the racial-national origin make-up of the respective communities in which the terminals were located. (A. 220-24; 352-416).

(2) *ETMF's No-Transfer Policy*

With limited exceptions discussed below, ETMF has at all times had a "no-transfer" policy prohibiting (1) transfer between city and road job classifications, and (2) transfer between terminals. Without regard to contract seniority rules, city employees who desired employment as road drivers, or vice versa, were required to forfeit their job seniority, resign and then apply for jobs in the other (city or road) job classification. (A. 72). Similarly, again without regard to contract seniority rules, employees who sought to transfer between terminals were, with one exception not applicable here,[7] required to forfeit all seniority before assuming a job at another terminal. Because there have never been road operations in San Antonio, city employees there have at all times been prohibited from transferring to road jobs by virtue of ETMF's policy prohibiting inter-terminal transfer. ETMF's lifting of the prohibition against inter-classification transfer for a thirty-day period in early 1972 was not

[7] Road drivers on lay-off are permitted to exercise their already-existing job seniority at other terminals within ETMF's Southern Conference Area.

effective as to San Antonio city employees. (A. 73). In short, contract rules governing job seniority *upon transfer* between the city and road classifications have never been operative at San Antonio, because such transfers have at all times been prohibited by ETMF.

(3) *Contract Seniority Rules*[8]

Historically, both because of patterns of organization of motor freight employees, and because of decisions rendered by the National Labor Relations Board,[9] there developed in the freight industry on a terminal by terminal basis separate collective bargaining units for city employees on the one hand and road employees on the other. (A. 143-48; 211-12). Race and/or national origin of the employees involved has had nothing to do with the development of separate road and city bargaining units. (A. 148, 212-13).

Separate units for city and road employees have continued to exist, on a terminal by terminal basis, as collective bargaining in the freight industry has progressed from single employers and local unions to state, regional, area and finally (in 1964) national bargaining. (A. 143-45). Since 1964, bargaining has been conducted by union and employer committees possessing powers of attorney from individual local unions and individual employers. (A. 205-10).

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[8] The seniority rules here at issue are identical to those in *International Brotherhood of Teamsters* v. *United States of America* and *T.I.M.E.-D.C., Inc.* v. *United States of America,* (No. 75-636 and 75-672 (Consolidated)).

[9] See, *e.g., In Re Georgia Highway Express, Inc.,* 150 NLRB 1649 at 1651 (1965); *In Re English Freight Co.,* 58 NLRB 1387, 1389-90 (1944).

The result of such bargaining continues to be separate city and road contracts,[10] again on a terminal by terminal basis, between individual employers and individual local unions. As noted before, there has thus been at all relevant times a contract between ETMF and Local 657 governing city employees at ETMF's San Antonio terminal. Because no road employees are domiciled in San Antonio, there has been no road contract effective there.

Job seniority under applicable collective bargaining agreements, whether in the road job classification on the one hand, or the city job classification on the other, is "competitive" seniority within the definition previously adopted by this Court in *Franks* v. *Bowman Transportation Co.*[11] That is, road and city employees use their "job seniority" within their respective classification to compete in bidding for jobs and as protection against lay-off. (A. 72-73). Under existing collective bargaining agreements and the seniority provisions embodied there, an employee who is permitted by his employer to transfer between the road and city job classifications assumes job seniority in his new classification only from the date of employment therein. (A.73). Uncontradicted evidence at trial was that these seniority rules, embodying job seniority from the date of employment within the particular bargaining unit (road or city) "apply to all job applicants and employees (in the respective job classifications) regardless of race or qualifications." (A. 58). Thus,

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[10] The contracts consist of a "national agreement" (the National Master Freight Agreement) and area and/or local supplements or riders governing the job rights of city, road, garage and office clerical employees (A. 98-99, 331-49).

[11] — U.S. —, 47 L.Ed.2d 444, 462-63, 471 (1976).

for example, *any* city employee, whether Anglo, Mexican-American or Black, upon moving to a road job, is required to give up his city job seniority and assume road job seniority only from the date of entry into the road bargaining unit and road job classification. (A. 58, 73). The same applies to road employees moving to the city.

Employees in both city and road job classifications have historically and continuously preferred this separation of road and city job seniority. (A. 221). Employees within the jurisdiction of Local 657 in San Antonio, overwhelmingly "minority" in terms of race and/or national origin make-up, and "city employee" in job classification, voted conclusively to maintain separation of road and city job seniority in a special election held shortly after trial of the instant case in 1973. (A. 49-54).

Seniority rules which define job seniority as the date upon which an employee began his employment in his job classification have never been used by Southern Conference or Local 657 to deny to individuals, discriminatorily refused employment in the road (or city), job seniority from the date they would have been employed in that classification "but for" unlawful discrimination. To the contrary, the union entities here involved consistently insisted on application of a "rightful place" seniority concept to those individuals who alleged and proved discriminatory denial of employment in, *inter alia,* the road motor freight employee classification.[12]

Applicable contracts have, at relevant times, expressly prohibited employment discrimination on the

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[12] See *Bing* v. *Roadway Express Co., Inc.,* 485 F.2d 441 (5th Cir. 1973).

basis of race or national origin. (A. 217-19). Contracts applicable at all ETMF terminals in Texas (and elsewhere) have provided:

> The Employer and the Union agree not to discriminate against any individual with respect to his hiring, compensation, terms or conditions of employment because of such individual's race, color, religion, sex, or national origin, nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of his race, color, religion, sex, or national origin.

None of the Plaintiffs here involved had ever sought to utilize contract grievance and arbitration procedures to prove discriminatory denial of road employment so as to warrant the grant to them of "rightful place" seniority within the road job classification. (A. 59).

C. The Trial Court's Decision

Dismissing plaintiffs' application for a class action, the trial court in the instant case held that the contract seniority system, embodying separate seniority for the city and road job classifications and bargaining units, did not violate Title VII or 42 U.S.C. § 1981. In so holding, the trial court found:

> (a) "It is stipulated that none of the plaintiff employees were discriminated against as to their original employment;"
>
> (b)"The named plaintiffs had not properly applied for road jobs and were in any event not qualified therefor;"
>
> (c) "The existence of separate contracts and separate job bidding and lay-off seniority for city and road drivers was reasonable 'as an accepted business practice and by the fact the National

Labor Relations Board recognizes the two job groups as separate bargaining units';"

(d) Contract provisions providing for separate job bidding and lay-off seniority for city and road drivers "applied to all job applicants and employees regardless of race or qualifications, and are not in any way discriminatory;"

(e) As a matter of law union defendants had not "violated Title 42, United States Code, Section 2000e-5 or any section of Title 42 relating to race discrimination." (App. pp. A-12, 73, 86).

D. The Court of Appeals' Opinion

Reversing the trial court, the United States Court of Appeals for the Fifth Circuit used the vehicle of "class action" to nullify the trial court's finding that individual plaintiffs had failed to prove their claims of discrimination.

Concluding summarily that *Rodriguez* was a proper class action under Rule 23 of the Federal Rules of Civil Procedure [13] and determining *sua sponte* that a "Texas-wide class of minority city drivers "was appropriate, the Court concluded that statistics reflecting the substantial disparity between Anglos on the one hand and Blacks and Mexican-Americans on the other in ETMF's Texas road driving force "established a prima facie case of past discrimination in hiring (in regard to road jobs)" which had affected plaintiffs. In so holding, the Fifth Circuit disregarded the trial court's undisputed findings that plaintiffs (a) had sought employment only in San Antonio, where no road jobs existed and had been awarded the highest

[13] We defer to ETMF's Brief as to presentation of argument concerning "class action" considerations.

paying jobs then available at ETMF's San Antonio terminal; (b) had not made proper application for road jobs, and (c) were in any event not qualified for road employment. Similarly, the Fifth Circuit disregarded plaintiffs' stipulation, in conformance with the afore-cited findings of the trial court, that they "were not discriminated against in original employment" when they were hired at San Antonio as city drivers and thus placed in the city driver job classification. Wrote the Fifth Circuit: "We accord no weight to the stipulation that the named plaintiffs were not discriminated against when they were hired at the San Antonio terminal (by ETMF) as city drivers," contending that the stipulation did not foreclose simultaneous discrimination against plaintiffs based upon "their inability to gain a road driver job." (A. 88).

Having thus concluded that plaintiffs (and apparently the Texas-wide class as well) had been discriminatorily denied road jobs in original hire, the Fifth Circuit disregarded the obvious fact that ETMF's "no-transfer" policy had rendered contract seniority rules governing transfer inoperative at the San Antonio terminal. Instead, the appellate court concluded that contract seniority rules providing separate job seniority for city drivers on the one hand and road drivers on the other, effectively discouraged the transfer of city drivers to road positions and thus discriminatorily "locked-in" minority city drivers to their lower paying jobs. (A. 99-100). Because representative union committees, acting upon powers of attorney from local unions, had participated in negotiations resulting in contract seniority rules which did not provide for "job seniority carryover . . . on a one-time

only basis for qualified minority city drivers who wished to transfer to the road," Southern Conference and Local 657 were held to have violated and thus to be liable under Title VII and 42 U.S.C. § 1981. (A. 98-101).

As part of its general guidelines governing "remedy," the Fifth Circuit ordered that "qualified minority" city drivers in the Texas-wide class be permitted to transfer within a "Texas-Southern Conference" area.[14] Road seniority for *all* such employees was to be fixed according to a "*Bing* qualification date" formula,[15] apparently *regardless* of any showing (or lack thereof) of discrimination against the individual. (A. 105-07).

SUMMARY OF ARGUMENT

I. Contract seniority rules here at issue, effective only upon transfer between city and road jobs, do not discriminatorily "lock in" San Antonio city employees to their city jobs, in violation of Title VII. Because ETMF enforced non-contractual "no-transfer" rules which at all times *prohibited* San Antonio city employees from transferring to road jobs and road bargaining units at other terminals, contract seniority

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[14] The "Southern Conference" encompasses a ten state area from Florida to Texas, a substantially larger area than Texas alone. The court did not make clear whether or, if so, why Texas city employees would or should be able to claim road vacancies in the larger area.

[15] *Bing* v. *Roadway Express, Inc.*, 485 F.2d 441 (5th Cir. 1973). There, "futility" was determined to have excused individual minority employees from actually applying for road jobs. The individual's "qualification date" (the date he was qualified to be a road driver) and the actual filling of road vacancies at his terminal (there Atlanta) of domicile were used to determine "rightful place" seniority.

rules effective *only upon transfer* were *never operative*. In *Franks* v. *Bowman Transportation Co.*, — U.S. —, 47 L.Ed. 2d 444 (1976) this Court inferentially recognized that an employer's exclusion of employees from a bargaining unit does not affect the legality of facially neutral contract seniority rules governing the rights of bargaining unit employees. Similarly, appellate courts have recognized that unions are not necessary parties where an identical "no-transfer" rule is at issue (*Jones* v. *Lee Way Motor Freight*, 431 F.2d 245 [10th Cir. 1971]) and have exonerated union defendants from liability where ETMF's "no-transfer" rule was the basis of complaint. *Thornton* v. *East Texas Motor Freight*, 497 F.2d 416 (6th Cir. 1974). Contract seniority rules which never applied to San Antonio city employees cannot discriminate against them, and do not violate Title VII.

II. Even where transfer between city and road bargaining units is permitted, contract seniority rules, neutral in their origin and upon their face, do not unlawfully discriminate. City jobs are not menial, low paying jobs, but rather are desirable jobs which many employees, regardless of race or national origin, prefer over road jobs. Unlike otherwise qualified minority employees who occupy the lowest paying jobs in a plant, line-of-progression seniority system, minority city employees have not uniformly been denied road jobs for discriminatory reasons. In fact, an overwhelming majority of freight industry employees, including minority city employees, desire the continuation of contract seniority rules which provide for job seniority only from the date of employment in the respective city or road bargaining unit. Under these circumstances, the seniority rules at issue constitute a "bona fide senior-

ity . . . system" within the meaning of Section 703(h) of Title VII.

Union compliance with the Fifth Circuit's directive to permit "all minority city employees to transfer to the road with carryover (competitive) seniority . . ." would result in reverse discrimination which this Court says Title VII prohibits. *Griggs* v. *Duke Power Co.*, 401 U. S. 424 (1971). Union contract rules and practice permit city employees who are discriminatorily denied road jobs to obtain "rightful place" road job seniority under contract grievance and arbitration procedures, which San Antonio city employees never sought to utilize. Contract rules thus strike a reasonable balance between a union's twin responsibilities of (a) protecting against discrimination in the filling of road jobs and (b) protecting against reverse discrimination which would result from the indiscriminate award of competitive road job seniority to minority employees, solely on the basis of their race or national origin. *Franks* v. *Bowman Transportation Co.*, 47 L.Ed. 2d 444 (1976). A finding that contract seniority rules violate Title VII is not justified.

ARGUMENT

I.

The Contract Seniority Rules Here at Issue, Effective Only on Transfer Between Road and City Classifications, Have Never Been Operative at ETMF's San Antonio Terminal. Therefore, They Have Not "Locked-In" San Antonio Employees to Their City Jobs.

In finding that Southern Conference and Local 657 violated Title VII [16] "for their role in establishing separate seniority rosters that failed to make allowance for minority city drivers who had been discriminatorily relegated to city driver jobs . . . ." the Fifth Circuit Court of Appeals relied upon its conclusion that "the inability of city drivers to carryover their competitive-status seniority formed an important link in the chain that "locked" minority drivers into city driver jobs." (A. 99-101). As noted before, contract seniority rules governing "competitive-status" road seniority were inoperative as to San Antonio city employees, and formed no part of the chain that "locked" San Antonio minority drivers into city driver jobs.

In support of the foregoing conclusion, the Fifth Circuit itself noted that "the company (ETMF) has always exercised full responsibility for hiring; the unions have never exercised any." (A. 99; See 87, fn. 18). Southern Conference and Local 657 were not responsible for any alleged discrimination in regard to plaintiffs' hire. Moreover, the parties stipulated at

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[16] The Fifth Circuit simultaneously found a violation of 42 U.S.C. § 1981. For purposes of argument, we assume that all considerations relevant to a finding of Title VII violation apply identically to § 1981, and make no further mention of the latter provision.

trial: (a) that plaintiffs were employed by ETMF at its San Antonio terminal without regard to their race, color or national origin and (b) that plaintiffs' claim against ETMF was based upon the company's failure to consider their road driver applications pursuant to ETMF's no-transfer rule. In another context,[17] the Fifth Circuit itself noted that "the gist of the complaint in cases like the one before us . . . is the policies of the company which discouraged and prevent transfer regardless of qualifications. . . ." (A. 95). The company "transfer" policies referred to were those which (a) prohibited transfer between city and road job classifications and (b) prohibited transfer between terminals. Nowhere does the Fifth Circuit (or trial court) find, suggest or even intimate that Southern Conference and Local 657 were in any respect responsible for ETMF's "no transfer" policies.

The significance of the foregoing is that plaintiffs and all other minority (and majority) San Antonio city employees were absolutely prohibited from transfer to road jobs by virtue of (a) their initial hire as city employees at the San Antonio terminal where there were no road jobs and (b) ETMF's no-transfer policies which, except for a 30 day period in 1972, prohibited transfer between city and road classifications and *at all times* prohibited their transfer to other terminals at which ETMF's only road jobs were domiciled. As to San Antonio minority (and majority) city employees, contract seniority rules operative upon transfer from city jobs to road jobs *were never operative,* because such transfers were always prohibited.

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[17] The referenced "context" was the appellate court's discussion of the trial court's finding that named plaintiffs were not qualified for road jobs.

Contract seniority rules were *not* a causal "link in the chain" that allegedly locked San Antonio minority drivers into city driver jobs.

Can racially neutral contract seniority rules, never operative and thus *not* part of a causal chain of alleged discrimination, be a basis for finding Title VII violation and liability? Wrote this Court in *Griggs* v. *Duke Power Co.*, 401 U.S. 424 at 430-31:

> Congress did not intend by Title VII, however, to guarantee a job to every person regardless of qualifications. In short, the Act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has prescribed. What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment *when the barriers operate* invidiously to discriminate upon the basis of racial or other impermissible classification. (Emphasis added).

Seniority rules which *do not operate* do not fit the *Griggs* equasion nor fall within Title VII's prohibition.

Conceptually, ETMF's San Antonio city drivers are in the position of the rejected applicants whose claim for relief was before this Court in *Franks* v. *Bowman Transportation Co.*, — U.S. —, 47 L.Ed.2d 444 (1976).[18]

In *Franks*, this Court recognized that an employer's exclusion of applicants from Bowman's over-the-road seniority system there in effect did not affect the *bona*

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[18] The Fifth Circuit's decision in *Franks*, reported at 495 F.2d 398 (5th Cir. 1974) is discussed *infra*, both as to the effect of a "no-transfer" rule and as to the seniority system involved there.

fides of the system: "The underlying legal wrong affecting them (the applicants) is *not* the alleged operation of a racially discriminatory seniority system but of a racially discriminatory hiring system." — U.S. at —, 47 L.Ed.2d at 458. Here, the "underlying legal wrong" (if there is one) affecting San Antonio's city employees is (a) their original hire as city employees and (b) ETMF's absolute prohibition against subsequent transfer to the road.[19] *Franks'* acknowledgment that the *bona fides* of a neutral seniority system are unaffected by employer's discriminatory exclusion of individuals from the bargaining unit within which the system operates reduces, at bottom, to an acknowledgment that a facially neutral seniority system does not violate Title VII when not causally linked to discrimination. So it is here.

That logic has not escaped other appellate courts. In *Jones* v. *Lee Way Motor Freight, Inc.*, 431 F.2d at 245 (10th Cir. 1970), cert. den. 401 U.S. 954 (1971). A no-transfer policy almost identical to that of ETMF here was determined to violate Title VII by perpetuating discriminatory hiring practices.[20] There were in effect between the employer and local unions contractual job seniority rules identical to those here in effect between ETMF and Local 657. Nevertheless, neither the trial court or Tenth Circuit found that contract seniority rules violated Title VII. Indeed, unions were

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[19] Nothing herein is intended to indicate that plaintiffs were discriminated against in their original hire as city drivers in San Antonio, or to approve the Fifth Circuit's wholesale disregard of their stipulation to the contrary. See fn. 2, *supra*.

[20] Again, we note that plaintiffs stipulated at trial that they were not discriminated against in their original hire. See A. 113; fns. 2 and 19, *supra*.

never made a party to the action. It was Leeway's "no-transfer" rule that discriminated against minority plaintiffs. Where such a no-transfer policy operated, the legality of seniority rules could not be considered.

Similarly, in *Thornton* v. *East Texas Motor Freight,* 497 F.2d 416 (6th Cir. 1974), the Sixth Circuit reversed the trial court's finding of local union liability based upon the existence of ETMF's "no-transfer" rule. *Id.* at 425-27. Again, consideration as to violation of Title VII on the part of union entities was directed *solely* towards the existence of the no-transfer rule. Contract seniority rules, identical to those involved here, were never considered. *Id.* at 425-26. Where union liability was at issue, contract seniority rules obviously would have been considered had they been deemed to constitute a "causal link" in alleged discrimination against the plaintiffs in *Thornton.* The Sixth Circuit's finding of no union liability reduces to an acknowledgment that contract seniority rules do not constitute a "causal link" in perpetuating hiring discrimination where there exists an absolute no-transfer prohibition.

The factual background in *Franks* v. *Bowman Transportation Co., supra,* was different. There, employer Bowman in 1967 discontinued its rule flatly prohibiting inter-departmental transfers. Applicable collective bargaining agreements continued thereafter to recognize "departmental seniority." Specifically noting that the no-transfer rule had been eliminated, the Fifth Circuit proceeded to consider the post-1967 legality and effect of the seniority rules. 495 F.2d at 410-11, 414-16. Elimination of the no-transfer policy had given rise to the possibility of transfer between departments. The Fifth Circuit, like this Court in

Franks, the Tenth Circuit in *Jones,* and the Sixth Circuit in *Thornton,* recognized that so long as the no-transfer prohibition existed, contract seniority rules had no causal effect. *Ibid.*

Logic and the legal authority cited above compel the conclusion that contract seniority rules, effective only upon transfer, did not operate to perpetuate alleged hiring discrimination at ETMF's San Antonio terminal. Plaintiffs, city employees there, were not discriminatorily "locked-in" to their city jobs by contract seniority rules, and the Fifth Circuit's holding to the contrary is erroneous.

II.

Neutral Contract Seniority Rules, Providng for Job Seniority From Date of Entry Into the Respective (City or Road) Bargaining Unit, Are Preferred by a Substantial Majority of Affected Employees, Including Minority City Employees. Southern Conference and Local 657 Have Made Reasonable Accommodation to the Rights of Those Discriminatorily Excluded From Subject Bargaining Units. The Existence of Such Contract Seniority Rules Therefore Cannot Be the Basis for a Finding of Union Title VII Violation and Liability on the Part of Southern Conference and Local 657.

The road traveled by the Fifth Circuit on its way to determining that contract seniority rules violate Title VII was not an easy one. That Court itself admits that "a pattern of past discriminatory hiring is essential to the plaintiffs' case (citing cases.)" (A. 85). And it has been conclusively shown that the existence of an absolute no-transfer policy negates the effect of seniority rules which operate only upon transfer. (pp. 18-23, *supra*). Because plaintiffs stipulated at trial that they had not been discriminated against in their original hire, and because, moreover, ETMF

at all times had a policy prohibiting transfer by San Antonio city employees to the road, consideration of contract seniority rules should have been foreclosed.

These barriers, the Fifth Circuit chose not to confront. Rather, that court *sua sponte* certified the existence of a Texas-wide class of minority city drivers, domiciled at all ETMF's Texas terminals, and then proceeded to litigate a claim of discriminatory denial of road employment which San Antonio city drivers could not, on the record evidence adduced at trial, present.

The Fifth Circuits spawning of a class Texas-wide in scope was inconsistent with terminal-wide classes found appropriate in other cases. See *Sabala* v. *Western Gillette, Inc.*, 516 F.2d 1251 (5th Cir. 1975), cert. pending, (No. 75-788); *Bing* v. *Roadway Express, Inc.*, 485 F.2d 441 (5th Cir. 1973). Similarly, equitable considerations justifying such a class (upon the basis that the right of minority employees at Texas terminals other than San Antonio might otherwise not be protected) were wholly absent: there simultaneously pended in the Northern District of Texas a pattern and practice suit against East Texas Motor Freight brought by the Justice Department. (A. 108-11)

While the Fifth Circuit's *sua sponte* class certification of a Texas-wide class is the sole vehicle by which contractual seniority rules come into issue,[21] Southern Conference and Local 657 now willingly address the question. As to the union entities who are parties

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[21] Again, we leave to ETMF detailed discussion of the propriety of the Fifth Circuit's decision in regard to class action aspects of the case.

here, no Title VII violation has occurred and no finding of Title VII liability is warranted.

In determining that contract seniority rules violated Title VII, and rendered Southern Conference and Local 657 liable therefore, the Fifth Circuit simply noted that the rules provide for job seniority from date of entry into the particular (road or city) bargaining unit "without provision for seniority carry-over by minority city drivers" (A. 99) and that because unions could have allowed "one-time-only seniority carryover . . . for qualified minority city drivers who wished to transfer" contract seniority rules were without "business necessity" justification. The Fifth Circuit's holding in this regard: (1) ignores Title VII's recognition that there exist "bona fide" seniority systems; and (2) results from an unreasoning application of principles developed in wholly distinguishable cases decided in the context of plant, line of progression seniority systems, simultaneously disregarding the factual context in which the contract seniority rules here at issue operate.

Title VII provides at Section 703(h)[22] that:

> "Notwithstanding any other provision of this sub-chapter, it shall not be an unlawful employment practice for an employer here to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority . . . system . . . provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex or national origin. . . ."

Indeed, in rendering a decision concerning the right of rejected applicants to seniority relief, this Court

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[22] 42 U.S.C. § 2000e-2(h).

accepted as a logical underpinning thereof the fact that "a discriminatory refusal to hire does not affect the bona fides of (a) seniority system." *Franks* v. *Bowman Transportation Co., supra* at 457.[23] Thus implicit in *Franks* is the assumption that there *is* such a thing as a bona fide seniority system.

Locically, *no* seniority system can award seniority to those individuals whom the employer has excluded therefrom. This is true whether the excluded individuals are rejected applicants as in *Franks*, or, as in the instant case, individuals shunted by the employer into another bargaining unit and job classification. And where the existence of different bargaining units and job classifications has absolutely no base in racial or ethnic discrimination, but rather in legitimate, historical non-discriminatory reasons, an award of job seniority from date of entry into the respective bargaining unit is literally "not the result of an intention to discriminate because of race, color, religion, sex or

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[23] The entire quotation was:

> "The Court of Appeals reasoned that a discriminatory refusal to hire 'does not affect the bona fides of the seniority system. Thus the differences in the benefits from conditions of employment which seniority system accords to old or new employees is protected as "not an unlawful employment practice" by [§ 703(h)]. 495 F.2d at 417. Significantly, neither Bowman nor the unions undertake to defend the Court of Appeals' judgment on that ground. It is clearly erroneous."

Obviously, what was "clearly erroneous" was the Court of Appeals' denial of seniority relief to rejected applicants upon the basis of the quote. Because the remainder of this Court's majority opinion assumed a "bona fide" seniority system in determining the seniority relief to be awarded rejected applicants, the Court of Appeals' reasoning that discrimination in hire "does not affect the bona fides of (a) seniority system" must be given substantial credence.

national origin. . ." The Fifth Circuit makes no attempt to question the legitimacy of the reasons underlying the existence of separate collective bargaining units for city and road employees. Similarly, there is no evidence nor, in the Court's written opinion, the slightest intimation that the existing job seniority rules evidence an intention to discriminate. In sum, the Fifth Circuit at a stroke (1) denies the contract seniority rules here at issue "bona fide" status based solely upon ETMF's alleged discrimination in hire and (2) presumes the seniority rules are intended to discriminate, without supporting record evidence.

This the Fifth Circuit did by a rote, unreasoning application of case law inapposite to the factual circumstances of the instant case. The legal principle it applied was: Where an employer discriminates on the basis of race or national origin in the assignment of jobs, a seniority system which defines job seniority based upon the date of entry into a particular job unlawfully perpetuates the employer's hiring discrimination. *See, e.g., United States* v. *Jacksonville Terminal Co.*, 451 F.2d 418 (5th Cir. 1971), cert. denied 406 U.S. 906 (1972); *Local 189, United Papermakers and Paperworkers* v. *United States*, 416 F.2d 980 (5th Cir. 1969); *Quarles* v. *Philip Morris, Inc.*, 279 F.Supp. 505 (E.D. Va. 1968).[24] Each of these cases originated and was decided in the context of a plant, line-of-progression seniority system. Thus, there runs through the cases a common factual thread:

> (1) A job seniority system necessarily tied to and originating in the employer's racial and ethnic discrimination in assignment of jobs;

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[24] See also *Johnson* v. *Goodyear Tire & Rubber Co.*, 491 F.2d 1364 (5th Cir. 1974); *Robinson* v. *Lorillard Corp.*, 444 F.2d 791 (4th Cir. 1971), cert. den. 404 U.S. 1006 (1972).

(2) A sometimes-existing pattern of racially-segregated unions;

(3) A line-of-progression job seniority system where minorities are shunted into the most menial low-paying jobs, which no individual would choose to fill if qualified for other employment; and

(4) Utilization of the job seniority system by union entities there involved to oppose and obstruct the grant of "rightful place" job seniority.

In *all* of the cited cases the job seniority system involved was applicable to a local plant unit, and no attempt was made by either the employer or unions to justify the seniority system on a non-racial or national origin basis. To the contrary, the finding of an *intent* to maintain discriminatory hiring conditions was warranted, and in *Quarles* was specifically made. *Quarles, supra,* at 517-18. Racially segregated local unions formed part of the factual background in *Papermakers, Jacksonville Terminal* and *Robinson.* In *each* of the cited cases racial and ethnic minorities were restricted at hire to low-paying, menial jobs which no employee would voluntarily choose to fill if given a choice. Finally, there is no indication in any of the cases that unions involved agreed to "rightful place" seniority relief for hiring discriminatees. Indeed, in *Johnson* v. *Goodyear Tire & Rubber Co.,* the unions involved actually sought an injunction against the grant of seniority relief by the employer. *Johnson, supra,* fn. 24, at 1369.

From the foregoing cases developed a legal presumption that where an employer discriminates at original hire in the assignment of jobs, a job seniority system awarding seniority upon the basis of entry into the particular job unlawfully perpetuates hiring dis-

crimination and violates Title VII. When applied to the instant case, the presumption breaks down and cannot be entertained.

Contract seniority rules in the instant case are neutral on their face. They apply to all employees within the bargaining unit (city or road) and job classification regardless of race or national origin. Similar to the seniority rules and the cases cited above, those applicable here award job seniority from date of employment in the respective (city or road) bargaining unit and job classification. There the similarities end. Record evidence regarding the seniority rules here at issue establishes the following:

> (1) Rules establishing separate job seniority for city and road bargaining units and job classifications have no origin in nor do they represent an intention to discriminate on the basis of race or national origin; in fact, they are preferred by substantial majority of employees, including but not limited to minority city employees;
>
> (2) Unions have never been segregated upon racial or ethnic lines; for example, the local union involved here, Local 657 is integrated and indeed controlled by what are otherwise regarded as racial or ethnic minorities;
>
> (3) There is no line of progression between city and road jobs, and city jobs are not menial, low-paying jobs which no individual would choose to fill if qualified for other employment; rather, city jobs pay well, have weekly guarantees, have fringe benefits equal to road jobs, and are for various reasons preferred by many employees regardless of race or national origin; and
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> (4) Job seniority rules have never been used by union entities to oppose and obstruct the grant of

> "rightful place" job seniority to those discriminatorily excluded from seniority units in job classifications by the employer, rather, contract rules prohibit racial or ethnic discrimination and provide a means for employees to obtain "rightful place" seniority upon a showing of such discrimination.

These evidentiary considerations should be compared with those listed at pp. 27-28, *supra*.

Nor do the recited factual considerations constitute a distinction without a difference. Rather, taken with applicable legal authority, they compel a finding that the contract seniority rules do not violate Title VII, and that Southern Conference and Local 657 cannot be held under Title VII therefor:

First, it simply cannot be presumed by Southern Conference, or Local 657, or any court making a realistic analysis, that *all* otherwise qualified minority employees in the city classification have been discriminatorily denied road employment. This is obviously the case, for clear and compelling reasons. As noted above, city jobs are good jobs and are populated not solely or even primarily by minority race or ethnic employees. Road jobs were not available at all of ETMF's terminals. They were not available at San Antonio, and in this connection plaintiffs thus stipulated at trial that they were not discriminated against when they were employed as city drivers at San Antonio. Indeed, the Fifth Circuit recognized:

> "ETMF's system of terminal-based responsibility for hiring and of domiciling road drivers only at certain road terminals is not discriminatory, and we leave those practices in tact." (A. 103).

ETMF's terminals are separated by substantial distances. Analogizing to a plant employment situation, one imagines an individual applying in Cleveland and being hired at a high paying welder's job, thereafter learning that the same employer has an operation in Chicago where tool and die workers, in an entirely different job classification and seniority system, are paid even more, and thereafter demanding job seniority rights in Chicago upon the allegation that he was discriminatorily denied employment there, when in fact he never sought it. There may well be individuals who were discriminatorily denied employment as tool and die workers in Chicago. The individual who sought and obtained a high paying job in Cleveland was not one of them.

Similarly, there may have been minority individuals discriminatorily denied employment as road drivers by ETMF. That is not to say nor can it be said that *all* minority race and national origin city employees were thus discriminated against. On precisely this logic, plaintiffs who were city drivers at San Antonio stipulated that they were not discriminated against in their original hire. The Fifth Circuit found a Title VII violation and held Southern Conference and Local 657 liable therefor because they had not permitted all minority employees to transfer to the road with carryover seniority. The presumption implicit in that holding is that *all* minority city drivers had been discriminatorily denied road employment. Plainly, that presumption cannot withstand analysis and is contrary to record evidence. The Fifth Circuit's error in that regard infects its finding that Southern Conference and Local 657 violated Title VII.

Insofar as they act in a representative capacity[25] labor organizations have the obligation to represent bargaining unit employees without regard to race (or national origin). See *Steele* v. *Louisville & N. Ry.*, 323 U.S. 192 (1944); and see *Ford Motor Co.* v. *Huffman*, 345 U.S. 330 (1953) As far as is consistent with the foregoing restrictions, unions are similarly duty bound to attempt to obtain, through a collective bargaining agreement, contractual terms and conditions of employment which the employees they represent desire. See *Hughes Tool Co.*, 104 NLRB 318 (1953). See also *Emporiam Capwell Co.* v. *Community Organization*, 420 U.S. 50 (1975). Labor organizations cannot, of course, permit the will of a majority of bargaining unit employees to work racial or ethnic discrimination upon a minority. See *Franks, supra*, at 468-70. By the same token, neither is a labor organization justified in effecting reverse discrimination. As recently as June 25, 1976, this Court was constrained to make it entirely clear that Title VII and Section 1981 protect *all* individuals, including whites, from employment discrimination based upon race or national origin. *McDonald* v. *Santa Fe Trail Transportation Company*, — U.S. —, 44 U.S.L.W. 5069 (June 25, 1976).

Record evidence establishes beyond argument that the seniority system here at issue is one which road

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[25] There is no record evidence that Southern Conference has at any time been collective bargaining representative of the employees whose rights are at issue here. Rather, the Southern Conference was held liable in the instant case solely because various of its officers and/or representatives and employees had served upon negotiating committees, acting upon powers of attorney from local unions, who participated in negotiations resulting in the contract rules at issue. (A. 98-99).

and city employees, including, but not limited to, minority city employees, prefer. The system did not originate in racial or ethnic discrimination. Its present intention is not to continue such discrimination. Nor, as we have said before, has the system been used to perpetuate hiring discrimination.

Contract rules *prohibit* discrimination based upon race or national origin. There exists a contract grievance and arbitration procedure whereby individuals who have been discriminated against can vindicate their rights, including but not limited to obtaining an award of "rightful place" seniority—the seniority in road or city jobs they would have had "but for" discrimination against them.[26] There is no evidence in the record here, nor did either the trial or appellate courts find, that plaintiffs or any other of ETMF's minority employees had been in any respect frustrated in their attempt to gain "rightful place" seniority through the grievance and arbitration procedure. Again, as noted above, Teamster entities have agreed to and advocate a "rightful place" discrimination remedy.

At bottom, the Fifth Circuit convicts Southern Conference and Local 657 because contract seniority rules do not *automatically* grant to all minority city drivers, as alleged discriminatees, competitive-status job seniority in road bargaining units. *No* contract seniority rules can automatically remedy discrimination. Discriminatees must be identified and appropriate remedies fashioned thereafter. When plaintiffs

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[26] We do not suggest that utilization of contract grievance and arbitration procedures would preclude litigation of a subsequent Title VII claim. See *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36 (1974).

themselves chose not to use contract procedures to obtain their remedy, Southern Conference and Local 657 can scarcely be criticized for not doing so unilaterally. Especially is this so where ETMF has consistently argued that there has not been discrimination in road employment, and where plaintiffs themselves stipulated at trial that they had not been discriminated against.[27]

Equally compelling are considerations relating to the rights of incumbent road drivers. This Court, in *Franks* v. *Boman Transportation Co., supra,* determined that applicants rejected for road employment upon a racial or ethnic discriminatory basis are entitled to "rightful place" seniority in the filling of subsequent road vacancies. But in so doing, the Court majority recognized, and the dissent strongly stated, that *incumbent road drivers do have some rights. Franks, supra* at 468, 471, 473-78. These rights, union entities are obligated to protect by virtue of their representative status. See *Equal Employment Opportunity Commission* v. *MacMillan Bloedell Containers, Inc., supra,* fn. 27.

Plainly, in regard to the exercise of competitive-status job seniority, incumbent road drivers should

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[27] In *Equal Employment Opportunity Commission* v. *MacMillan Bloedell Containers, Inc.*, 503 F.2d 1086 (6th Cir. 1974), in a similar context, the Sixth Circuit wrote concerning joinder of union entities as Rule 19(a) defendants:

> This provides the union with a full opportunity to participate in the litigation in the formulation of proposed (seniority) relief against MacMillan. *As a practical matter, the Union need not play a role in the litigation until the court finds that MacMillan has violated Title VII.* Such an opportunity will allow the Union to protect adequatedy the interests of its members, will provide the discriminatee with full and complete (seniority) relief and will also insure that the suit is handled at one time and in one forum. (Emphasis added).

not be subjected to competition from individuals who have *not* been discriminatorily denied road jobs, but who, rather, assumed their city jobs voluntarily To award minority city employees competitive status seniority in the road bargaining unit upon transfer, *solely on the basis of their race or national origin,* is to subject incumbent road drivers, white, black or brown, to precisely the reverse discrimination which this Court says Title VII prohibits. *McDonald* v. *Santa Fe Transportation Company, supra; Griggs* v. *Duke Power Co., supra,* at 430-31.

Yet, it is precisely that reverse discrimination which the Fifth Circuit would have unions effect when it finds that Southern Conference and Local 657 violated Title VII by failing to direct "a one time-only transfer with (competitive-status) seniority carryover" for *all* ETMF's minority city drivers in Texas. (A. 99-101). It is precisely such reverse discrimination that the Fifth Circuit itself accomplishes when it orders as a remedy such transfer rights for all Texas minority city drivers. (A. 101-07).[28] Surely, labor organizations cannot be held to violate Title VII because they failed to insist upon reverse discrimination which that statute itself prohibits.

In sum, contract seniority rules, placed in issue by the Fifth Circuit, are not discriminatory either in their origin or upon their face. Taken with other contract rules, they make reasonable accommodation between

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[28] In this respect the transfer and seniority portions of the remedy guidelines ordered by the Fifth Circuit in the instant case are identical to those from which petitioners seek relief in *International Brotherhood of Teamsters* v. *United States of America and T.I.M.E.-D.C., Inc. v. United States of America,* (No. 75-636 and 75-672 (Consolidated)).

a labor organization's twin obligations of (a) protecting against racial and ethnic discrimination in filling of road jobs and (b) protecting against reverse discrimination against incumbent road drivers, which would result from the indiscriminate award of competitive-status road seniority to minority employees solely upon the basis of race or national origin. If these contract seniority rules do not constitute a "bona fide seniority . . . system . . ." then there exists no such system. In that case, Section 703(h) of Title VII is meaningless verbiage. We respectfully request that the Court make plain that this is not so.

CONCLUSION

Southern Conference of Teamsters respectfully prays that the judgment of the Court of Appeals be reversed, and that the judgment of the trial court be reinstated insofar as it found that Southern Conference and Local 657 committed no violation of Title VII or Section 42 U.S.C. § 1981.

Respectfully submitted,

DAVID PREVIANT
211 W. Wisconsin Avenue
Milwaukee, Wisconsin 53203

MULLINAX, WELLS, MAUZY & BAAB, INC.
L. N. D. WELLS, JR.
G. WILLIAM BAAB
Suite 200—8204 Elmbrook Drive
Dallas, Texas 75247

Counsel for Petitioner,
Southern Conference of Teamsters

August, 1976